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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 786

WILCOX MANUFACTURING COMPANY, *Petitioner*

v.

JEFFREY GALION MANUFACTURING COMPANY, *Respondent*

REPLY BRIEF FOR PETITIONER

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PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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Respondent's brief says that Petitioner's statement of the question presented misstates the holding of the Court below in respect to holding "the patents*" invalid on a technical point of Patent Office practice.

Respondent does not otherwise challenge the content of the question presented by Petitioner. Thus, the context of the question as to whether the constitutional purpose of the patent laws was subverted, is conceded. There *was* a declaratory judgment action brought by an old established company in an industry, against the patent of a new and infant competitor. The Court below *did* vitiate the patent on its face on a point which had already been considered and waived by the Patent Office before issuing the patent. The Court below *did not* weigh the worth of the invention actually

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* The question presented refers only to Wilcox apparatus patent 3,026,098 which was the subject of the declaratory judgment action.

claimed in the new competitor's patent, as to its lack of obviousness or anticipation or its commercial success. There *was* uncontroverted evidence that the invention had made possible the creation of a new industrial enterprise in an economically depressed region of the United States.

In the *Schriber* case cited by Respondent, this Court first identified the invention (webs "laterally flexible") and then ascertained that it was not disclosed in the specification. Again, in the *Permutit* case, this Court first identified the invention ("free" bed of zeolite) and then ascertained that it was neither disclosed nor claimed. In the present case, the Court of Appeals did not even concern itself with the threshold question of identifying the Wilcox invention as claimed.

We respectfully submit that the protection intended by the Constitution was denied to a really great invention in the notoriously backward coal mining industry, and solely on a technical point of Patent Office practice which had already been considered and waived by the Patent Office.

Respectfully submitted,

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